

124 FERC ¶ 61,109  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Cheyenne Plains Gas Pipeline Company, L.L.C.

Docket No. RP08-431-000

ORDER ACCEPTING TARIFF FILING IN PART AND REJECTING IN PART

(Issued July 29, 2008)

1. On June 30, 2008, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne) filed tariff sheets<sup>1</sup> intended to update and clarify its ability to waive provisions of its tariff, under certain conditions, to maintain the operational integrity of its system and service to its customers. Cheyenne proposes that the tariff sheets become effective August 1, 2008. The filing is unopposed, and the Commission accepts one of the tariff sheets to become effective August 1, 2008, but rejects the other two tariff sheets.

**Description of the Filing**

2. Cheyenne states that First Revised Sheet No. 250 and Original Sheet No. 250A are revised to permit the waiver of certain indentified tariff provisions due to a *force majeure* event so that Cheyenne can maintain its operations and/or commitments during such an event. Cheyenne explains that such waivers may include, among other things, changes related to scheduling deadlines, contract request and amendment procedures, capacity release, point re-designations, capacity sales timelines, and imbalance resolution procedures. Cheyenne emphasizes, however, that it will never seek waiver of its reservation charge crediting obligations in section 3.4 of Rate Schedule FT. Cheyenne further states that it will exercise reasonable discretion in a not unduly discriminatory manner when it determines that a waiver is required during a *force majeure* event. Additionally, Cheyenne states that any such waiver and the reason for the waiver will be

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<sup>1</sup> First Revised Sheet No. 241, First Revised Sheet No. 250, Original Sheet No. 250A to Cheyenne's FERC Gas Tariff, Original Volume No. 1

posted on its electronic bulletin board (EBB) in accordance with the Commission's guidelines, and subsequent to the *force majeure* event, it will file an informational report with the Commission describing the actions taken.

3. Cheyenne states that First Revised Sheet No. 241 provides for the temporary waiver, by mutual agreement between Cheyenne and a delivery point operator, of specific gas quality specifications. Cheyenne states that this provision will enable it and a delivery point operator to determine when it is in the best interest of both parties to waive particular gas quality specifications on a temporary basis. Cheyenne explains that it will only exercise such a waiver when it has the ability to: (1) maintain prudent and safe operation of all or part of its pipeline system, (2) ensure that such mutual agreement does not adversely affect its ability to provide service to others, and (3) ensure that such an agreement does not adversely affect its ability to tender gas for delivery to another downstream pipeline or end-user. Cheyenne also states that it will post any such agreement on its EBB.

4. Cheyenne acknowledges that section 358.5(c)(1) of the Commission's regulations provides that "A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transportation service, if these tariff provisions do not permit the use of discretion."<sup>2</sup> Although Cheyenne states that it operates its pipeline in a manner to avoid any critical situations, when the need for certain types of tariff waivers arise, it requires the authority to operate in the interest of safety and service without prior written approval of the Commission. Cheyenne emphasizes that it is proposing discretionary tariff waiver authority when such a waiver is appropriate to address short-term limited operational issues. Cheyenne also states that, pursuant to the Commission's regulations governing the use of tariff discretion, it will implement any waiver in a not unduly discriminatory manner.<sup>3</sup>

5. Cheyenne asserts that the proposed revisions are consistent with the Commission's policy "not to prohibit waivers that apply for temporary periods for operational reasons on a case-by-case basis."<sup>4</sup> Cheyenne reiterates that the proposed tariff language provides only for temporary waivers that will allow it to maintain operational integrity and service to its shippers when circumstances dictate. Cheyenne also points out that neither proposed waiver provision will grant it or a shipper the ability to execute transportation service agreements with negotiated terms and conditions of service. Additionally, Cheyenne states that the Commission's filing requirements and regulations governing the

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<sup>2</sup> 18 C.F.R. § 358.5(c)(1) (2008).

<sup>3</sup> 18 C.F.R. § 358.5(c)(2) (2008).

<sup>4</sup> See *Discovery Gas Transmission, L.L.C.*, 111 FERC ¶ 61,377, at P 14 (2005).

posting of waivers afford shippers adequate protection against undue discrimination. Cheyenne cites section 358.5(c)(4) of the Commission's Standards of Conduct, which requires pipelines to post to their EBBs all waivers granted to shippers within 24 hours of the occurrence. Further, states Cheyenne, pursuant to section 154.1(d) of the Commission's regulations, any non-conforming contract must be filed with the Commission for approval. Cheyenne asserts that the proposed tariff language is consistent with the Commission's policy of transparency, and Cheyenne emphasizes that all arrangements resulting from such waivers will be disclosed to the public through its EBB and applicable filings with the Commission. Finally, Cheyenne states that any waiver pursuant to these tariff provisions will be available to all similarly situated parties in a non-discriminatory manner.

### **Notice and Interventions**

6. Notice of Cheyenne's filing was issued on July 2, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>5</sup> Pursuant to Rule 214,<sup>6</sup> all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No person intervened or filed a protest by July 14, 2008, the deadline for interventions and protests.

### **Discussion**

#### **A. Force Majeure**

7. Cheyenne states that the Commission has a policy of granting expedited waivers during emergency circumstances and has recognized the effects of *force majeure* events on pipelines as well as the problems that the emergency conditions may create.<sup>7</sup> Cheyenne further states that, during emergency situations, a pipeline must take measures appropriate to provide service to the best of its ability in light of the fact that the business rules provided in a tariff are written and approved under the assumption that the pipeline

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<sup>5</sup> 18 C.F.R. § 154.210 (2008).

<sup>6</sup> 18 C.F.R. § 385.214 (2008).

<sup>7</sup> Citing *Northern Natural Gas Co.*, 109 FERC ¶ 61,013 (2004); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *Standards of Conduct for Transmission Providers*, Notice Granting Extension of Time to Comply with Posting and Other Requirements, Docket Nos. EY05-14-000, RM01-10-000, PL05-12-000 (Aug. 31, 2005).

is operating under normal circumstances. For example, continues Cheyenne, the absence of real-time measurement can create difficulties in rendering invoices that are accurate and timely when the software systems do not have the necessary data.<sup>8</sup> Further, states Cheyenne, imbalances may be unavoidable during emergency conditions, and the Commission has approved waivers of imbalance penalties where the shipper has no control over the imbalance.<sup>9</sup> Although it recognizes that each emergency situation is unique and may be related to one of many contributing factors, Cheyenne maintains that the need to waive tariff requirements due to emergency conditions and granting limited waiver of tariff provisions is accepted under Commission policy.

8. Cheyenne provides an example from its own experience to illustrate the need for the waiver authority it seeks. Cheyenne explains that, on September 16, 2007, it experienced a fire at its Cheyenne Plains Compressor Station resulting in a *force majeure* situation that required it to shut-in its compressor station and amine treatment facility.<sup>10</sup> Given the extent of the damage, states Cheyenne, it had to operate in *force majeure* mode until November 8, 2007.<sup>11</sup> Cheyenne points out that, during this period, it filed numerous updates with the Commission and posted regular updates to its EBB explaining its most up-to-date operational circumstances, including issues with point re-designations and downstream gas quality issues. Cheyenne emphasizes that it was able to maintain operations on a free-flow basis without the use of its compressor and amine treatment facility due to its ability to work with its shippers and interconnected parties. In Cheyenne's view, this situation illustrates the need for discretionary tariff waiver authority during a *force majeure* event.

9. The Commission will reject First Revised Sheet No. 250 and Original Sheet No. 250A. While the Commission encourages pipelines to establish procedures that will allow the pipelines to continue service to their customers in the event of unforeseen emergencies, Cheyenne's proposed section 7.5 would grant it overly broad discretion to waive its tariff obligations. The proposed section would allow Cheyenne to waive its obligations to maintain safe and reliable operations and/or commitments "during a specified force majeure event," but the section further states that such actions "may

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<sup>8</sup> See *Gulf South Pipeline Company, LP*, 112 FERC ¶ 61,294 (2005).

<sup>9</sup> See *Stingray Pipeline Company, L.L.C.*, 113 FERC ¶ 61,147 (2005).

<sup>10</sup> See Cheyenne Critical Notice Nos. 276, 277, et al., as well as Cheyenne's Reports of Service Interruption and/or Damage to Facilities (Reports 1 through 7) filed with the Commission.

<sup>11</sup> See Cheyenne Critical Notice No. 349 declaring the pipeline system ready for service and lifting the *force majeure*.

*include, but will not be limited to*, changes to deadlines related to scheduling, contract request and amendment procedures, capacity release, point redesignation, capacity sales timelines, and imbalance resolution procedures” (emphasis added). The Commission further finds that some of the examples listed are more in the nature of actions that would ease Cheyenne’s contract administration following a *force majeure* event than actions directly related to the pipeline’s operations and continued reliable service to consumers. However, the Commission’s action here does not preclude Cheyenne from seeking Commission authorization to waive these types of administrative provisions on a case-by-case basis. The Commission’s practice is to act promptly on such requests.

10. Moreover, some of the examples provided by Cheyenne are not actions that are urgent in a *force majeure* situation, and its existing tariff provisions already afford it enough flexibility to take action in an emergency situation. Section 30 of Cheyenne’s General Terms and Conditions (GT&C) establishes Critical Condition Procedures. Section 30.1 allows Cheyenne to issue a Strained Operating Condition (SOC) in accordance with section 4.4(c)(iv) of the GT&C. In contrast to proposed section 7.5, section 30.1 lists examples of actual operating conditions that would support the issuance of an SOC, including a system outage, extreme weather conditions, problems with line pack, and an excessive deviation by a shipper from its scheduled quantities. Section 30.2 allows Cheyenne to declare a Critical Operating Condition using the procedures of section 4.4(c)(iv) if the SOC does not improve, and the Critical Condition will be limited to the smallest possible area of the system. Section 4.4(c)(iv) requires Cheyenne to notify affected parties by means of the affected party’s choice of electronic notification.

11. The Commission rejects First Revised Sheet No. 250 and Original Sheet No. 250A because the authority Cheyenne seeks is not just and reasonable and because the Commission finds that Cheyenne’s existing tariff provisions provide it the operational flexibility it needs to address *force majeure* situations on its system.

## **B. Gas Quality**

12. Cheyenne states that non-routine changes to operating conditions may require it to work with downstream interconnect operators to address limited gas quality issues that will ensure continued delivery of gas when Cheyenne is temporarily unable to meet its tariff delivery point gas quality specifications. For example, Cheyenne states that it operates an amine treatment facility that removes CO<sub>2</sub> from the gas stream allowing Cheyenne to meet its two-percent CO<sub>2</sub> downstream gas quality requirement. According to Cheyenne, this facility must be taken off-line periodically for maintenance and

inspection.<sup>12</sup> During such limited periods, Cheyenne proposes to be allowed to enter into written agreements with its downstream operators to continue to deliver gas that may not meet the delivery point gas quality specifications.

13. Cheyenne explains that it has limited ability to commingle gas on its pipeline system, and any temporary upset on the pipeline (such as “pockets” of out-of-spec gas) requires Cheyenne to vent gas to the atmosphere even though a downstream operator may have the ability and may be willing to commingle gas containing up to three-percent CO<sub>2</sub> for temporary periods while Cheyenne maintains, updates, and/or repairs its amine treatment facility.<sup>13</sup> Cheyenne contends that its proposal protects the interests of upstream suppliers, shippers on both pipeline systems, and downstream markets to the extent both pipeline facilities can safely operate during these short-term upsets.

14. The Commission will accept First Revised Sheet No. 241. Proposed section 5.6 of the GT&C would allow Cheyenne and a downstream interconnecting party to agree that Cheyenne may deliver off-spec gas on a temporary basis in a non-discriminatory manner with certain stated safeguards. Section 5.6 represents a logical extension of existing section 5.4, which allows Cheyenne to waive gas quality specifications at receipt points. The proposed provision will give Cheyenne more flexibility in the operation of its system by allowing it to agree with a downstream party that it may deliver gas temporarily that does not conform to quality specifications.

The Commission orders:

(A) First Revised Sheet No. 250 and Original Sheet No. 250A are rejected, as discussed in the body of this order.

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<sup>12</sup> Cheyenne states that it requires an amine treatment facility because it receives gas with a higher CO<sub>2</sub> content than what it can deliver. *See* GT&C section 5.2(f) stating that Cheyenne may receive gas at three-percent CO<sub>2</sub> from receipts at the Cheyenne Hub, but is required to deliver gas at two-percent CO<sub>2</sub>. Additionally, Cheyenne also has an amine facility at Sand Dune for deliveries to the Southern Star Central Gas Pipeline, Inc. system.

<sup>13</sup> During Cheyenne’s *force majeure* event, it entered into arrangements with the interconnecting pipelines near Greensburg, Kansas, to accommodate a CO<sub>2</sub> waiver for substantial quantities. *See* Cheyenne’s Second Report of Service Interruption dated September 20, 2007.

(B) First Revised Sheet No. 241 is accepted to become effective August 1, 2008.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.